IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 74 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

V LUX PRIVATE LIMITED - Petitioner(s)
Versus
... - Respondent(s)

==========

Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/08/2007

ORAL JUDGMENT

1. The present petition is preferred for sanctioning the Scheme of Amalgamation, which is produced at Annexure-E, of V.Lux Pvt. Ltd., which is a Transferor Company with Xylon Electrotechnic Pvt. Ltd. which is Transferee Company.

2. It appears that vide Order dated 16.03.2007 passed by this Court(Coram : M.R.Shah, J.)in Company Application No.124/07, as the consent letters of the shareholders and unsecured creditors were produced and as there were no secured creditors, the meeting of the equity shareholders and unsecured creditors of the petitioning company were dispensed with.

3. It also appears that vide order dated 16.03.2007 passed by this (Coram : M.R.Shah, J.)in Company Application No.125/07 which was preferred by Xylon Electrotechnic Pvt. Ltd.(the Transferee Company), in view of the reasons recorded therein, as in the Scheme of Amalgamation, the Transferee Company was the holding Company, it was observed that separate proceedings are not required to be taken under Section 391(2) of the Companies Act by the said Company. The copy of the said order is placed on record by Mrs. Soparkar, learned counsel appearing for the petitioner. Therefore, it appears that the Transferee Company has not taken out separate proceedings for sanctioning the Scheme of

Amalgamation.

4. The present petition came to be admitted on 30.03.2007 and it was ordered to be advertised in two newspapers, i.e Indian Express English daily & Gujarat Samachar, Gujarati daily, both Vadodara edition. Publication in the Government gazette was dispensed with. Notice was issued to the Central Government, through Regional Director, Department of Corporate Affairs and the notice was also issued to the OL for examination into the affairs of the petitioning company through Chartered Accountant.

5. The affidavit is filed by Dharmendra M. Rathod, clerk of the learned Advocate Mrs. Soparkar together with the copy of the paper publication. As per the affidavit filed by Shekhar K.Shah of the petitioning company, no objection is received by the petitioner or its advocate in response to the advertisement opposing the Scheme of Amalgamation or otherwise.

6. The OL has filed report dated 08.06.2007 with the report of the Chartered Accountant Pankaj K. Shah Associates, and it has been stated in the report that the affairs of the Transferor Company have not been conducted in the manner prejudicial to the interest of the members or public interest.

7. In response to the notices issued to the Central

Government, Mr. P.L. Malik, Assistant Registrar of Companies has filed affidavit raising an objection based on the communication received by the Registrar of Companies vide letter dated 09.05.2007 from the Regional Director, Company Affairs.

8. The further affidavit is filed by Shekhar Shah, Director of the petitioning company dated 19.06.2007 to meet with the comments given on behalf of the Central Government. As per the said affidavit, there are no pending prosecution against the Company and any of its Directors for violation of various laws such as Companies Act, FEMA, IPC, SEBI Act, RBI Act, etc. before any Court. It is also stated in the said affidavit that the Company has no pending tax liability towards income tax, sales tax, or any Government tax and liability for the benefit of employees and workers. It is also stated that there are no sales or service transactions between the Transferor Company and the Transferee Company and hence, there is no sales tax or service tax or duty drawback charged for the same and no provisions is required to be made for its treatment of the same from the appointed date till the effective date.

9. In view of the aforesaid, the comments as referred to in para 3 of the said letter of the Regional Director would not survive. Para 1 of

the said letter refers to the latest financial statement which in any case has been filed. Much grievance is raised on the aspects of reduction of the internal holdings of the shares of the Transferee Company by the learned Asst. Solicitor General on behalf of the Central Government since the comment reads as under:

> “In respect of the internal holding of the shares, transferee company may be directed to obtain necessary approval of the Hon'ble High Court for cancellation of those shares.”

10. As such, on account of the sanction granted by this Court to the Scheme, the existence of the Transferor Company would end without winding up and consequently, any shares held by the Transferee Company as that of the Transferor Company would also automatically come to an end.

11. Therefore, so far as the internal holding of the Transferee Company is concerned, it does not get affected. It is not a case where the Transferee Company in lieu of the investment made or otherwise has allotted share to the Transferor Company, but as per the Transferee Company, shares are acquired by it of the Transferor Company. Therefore, the said part of the objection cannot be maintained.

12. In view of the above, the Scheme of Amalgamation(Annexure-E) is sanctioned.

13.Petition is allowed accordingly.

14.The cost of the learned Assistant Solicitor General is quantified at Rs. 3,500/- . It will be open to the concerned Company to make the payment by A/c. Payee cheque to the concerned counsel.

(JAYANT PATEL, J.)

*bjoy